

19.107 FAMILY MEDICAL LEAVE ACT (FMLA)

References:

Procedure 19.105 Sick/Injured With Pay and
Special Leaves
Family Medical Leave Act of 1993
FOP/City Labor Agreement
AFSCME/City Labor Agreement
City of Cincinnati Human Resources Policies and
Procedures, Section 3.4
Standards Manual 22.2.1

Definitions:

FMLA Eligible Employee: An employee who has worked at least 1250 hours during the past 12-month period.

Serious Health Condition:

- Inpatient care (admitted) in a hospital, hospice or medical care facility and including any period of incapacity.
- Continuing (2 or more times) treatment by a health care provider involving a period of incapacity of more than three consecutive days or treatment on at least one occasion which results in a regimen of continuing treatment.
- Any period of incapacity due to pregnancy or prenatal care. Generally 6 weeks Sick with Pay-Maternity is approved recovery time. Additional SWP-M time will be approved if the employee's physician decides additional time is needed for recovery.
- Any period of incapacity due to a chronic serious health condition defined as one which requires periodic visits or continues over an extended period of time for treatment (e.g., asthma, diabetes, epilepsy, chemotherapy treatment, radiation or dialysis treatments, etc.).
 - Serious health conditions are not generally cosmetic surgery, common cold, flu, ear ache or upset stomach.

- Absences due to employee's use of alcohol or drugs are not covered under FMLA. Absences for treatment of substance abuse are eligible for FMLA usage.

Form WH-380: Certification of health care provider-to be completed by the treating health care provider when a physician's statement is required by the supervisor.

Purpose:

To ensure necessary documentation of FMLA requests.

To establish a uniform Department procedure for requesting, recording and reporting personnel using the provisions of the Family Medical Leave Act.

Policy:

It is the policy of the City to provide up to 12 weeks of family and medical leave during a 12-month period to any eligible employees in accordance with the provisions of the Family Medical Leave Act of 1993.

The use of FMLA leave cannot result in the loss of any employment benefit accrued before the leave began, e.g., sick time sell back, sick usage incentive, etc.

The employee's private physician will evaluate the medical condition of an employee and authorize the clearance for return to duty following FMLA leave. The Employee Health Service physician will not be contacted for non-duty related illness/injury medical evaluations prior to the return to duty for an FMLA approved leave.

When FMLA time off is requested or determined to be FMLA time by the supervisor, the supervisor will assist the employee in completing a Form 25S (Request for Leave of Absence). In addition, the supervisor will advise the employee that **if** a physician's statement is needed, a Form WH-380 must be completed by the treating health care provider and returned to the supervisor as soon as possible in order for the time off to be approved as FMLA time.

A Form WH-380 must be submitted by the employee whenever the FMLA time off request is the first instance of this type of illness or injury **and** there is no related Form WH-380 on file.

An employee may be required to furnish re-certification of an illness relating to an FMLA time off instance. If this occurs, the supervisor will advise the employee that they must submit another Form WH-380 completed by the treating health care provider.

A supervisor cannot request a re-certification (Form WH-380) more often than every 30 days, regardless of the number of FMLA time-off requests for the same illness that are received during that period of time.

A Form WH-380 **can** be required for pregnancy or prenatal care related situations. In addition, time off relating to this situation can be retroactively designated FMLA for up to one year.

When the employee has a serious health condition that makes him unable to perform the functions of his position or is caring for a qualifying family member who has a serious health condition, the supervisor may require a physician's statement. If that occurs, a Form WH-380 must be submitted as soon as possible in order to receive approval for FMLA time off.

Information:

Personnel Section can be contacted for assistance in the determination or interpretation of Family Medical Leave Act (FMLA) requests. Additional information is available in the Human Resources Policies and Procedures, Section 3.4.

The Family Medical Leave Act provides eligible employees the right to take paid/unpaid leave for the conditions listed below:

1. Birth of an employee's child and to care for that child and/or any period of incapacity due to pregnancy or prenatal care.
2. Placement of a child with the employee for adoption or foster care.
3. Care for an employee's spouse, child, or parent with a serious health condition.

4. A serious health condition that prevents the employee from performing the functions of his/her position.

FMLA requires an employee to take these 12 weeks within a one year period of time, starting from the date of the first FMLA incident.

If both husband and wife work for the City and each wishes to take family leave for the birth of a child, adoption or placement in foster care, they may take a total of 12 weeks leave (rather than 12 weeks each). FMLA taken for the birth, adoption or placement of a child must be taken during the first 12 months after the arrival of the child.

Intermittent leave or reduced Scheduled Leave is authorized if medically necessary for a serious health condition of an employee or his/her spouse, child or parent. The leave may be taken in 12 consecutive weeks or used intermittently (take a day when needed over the year). It may in some cases be used to reduce the workload or workday, resulting in a reduced hour schedule. In all cases leave can not exceed 12 weeks over a 12-month time period.

Intermittent or reduced work week leave taken for the birth, adoption or placement of a foster child must be agreed to by the employee and the employer.

Intermittent or reduced work week leave taken for a serious health condition should be scheduled with a supervisor prior to taking the leave. If this is not possible, the employee must provide a treating health care provider completed Form WH-380 that intermittent or reduced leave is necessary.

Procedure:

A. Family Medical Leave Act (FMLA)

1. The Department will follow the current City guidelines as outlined in Human Resources Policies and Procedures, Police Department Procedures, and/or current labor agreement stipulations.

2. FMLA approval will occur when the employee's supervisor approves the time off. In the event that a physician's statement is required by the supervisor, final FMLA approval occurs when the employee submits a completed Form WH-380. A Form WH-380 must be submitted by the employee whenever the FMLA time off request is the first instance of this type of illness or injury **and** there is no related Form WH-380 on file. If there is any question by the supervisor about what is stated on the Form WH-380, it should be sent to the city physician for interpretation.
 - a. Personnel Section will review all Forms 25S. If the request does not meet FMLA guidelines, they will notify the affected section to notify the employee that the time off does not meet FMLA guidelines.
 - b. Notice of such designation to the employee will be either by providing a copy of the completed Form 25S at the time it is prepared and approved, or if by phone, mailing a copy to the employee. In either instance, the supervisor shall notify the employee that their FMLA requested time off is approved pending receipt of a treating health care provider completed Form WH-380 when required.
3. Leave which was not FMLA at the time it was taken but became FMLA leave while off can still be counted as FMLA if:
 - a. The employee advises the supervisor within two days after his return to work and provides a Form WH-380 verifying that the leave was an FMLA qualifiable leave.
 - 1) A treating health care provider completed Form WH-380 is submitted by the employee as soon as possible if one is required by the supervisor.

B. Employee Responsibilities: FMLA Requests

1. As soon as possible notify a supervisor from the assigned unit. If the need for leave is known in advance, submit a Form 25S explaining in detail the reason for the FMLA leave request. (The supervisor will complete the Form 25S in detail, including side 2, following telephone notifications.) Include the following information:
 - a. The specific nature of the illness or injury.
 - 1) The employee should advise the supervisor if the illness or injury is believed to be or is FMLA leave eligible.
 - b. How long you expect to be off duty.
 - c. Notice of court appearances, off-duty details, meetings, public appearances and training dates that may need to be rescheduled.
2. Provide a completed Form WH-380 when required.
3. Non-sworn employees will be governed by their current labor contract or the Human Resources Policies and Procedures.

C. Supervisor Responsibilities

1. Upon receiving notice an employee is requesting FMLA:
 - a. Document the information provided by the employee on a Form 25S and designate if the time is FMLA time. Process the Form 25S immediately.
 - 1) Assist the employee as necessary in filling out the Form 25S, including side 2. Give or send a copy of the Form 25S to the employee. This provides the employee with immediate approval of FMLA time off.

- 2) In the "Reason" section of the Form 25S, explain in reasonable detail why the employee is requesting FMLA.
- 3) On the Form 25S, indicate the recommendation of approval or disapproval of the use of FMLA.
 - a. If unable to determine if the leave is FMLA eligible, but it is believed to be, approve the leave as FMLA and provide the employee with a copy of the completed Form 25S. This gives him immediate approval of FMLA time off pending the receipt of a treating health care provider completed Form WH-380 **if** one is required by the supervisor.
 - 1] The supervisor must list specific details indicating why the leave is FMLA eligible.
- 4) Forward daily the Form 25S and Form WH-380 through the proper chain of command to the District/Section/Unit Commander.
- 5) The supervisor will notify the employee if the time off does not meet FMLA guidelines as determined by Personnel Section.

D. Duties of a District/Section Commander

1. Upon receipt of a Form 25S for FMLA benefits:
 - a. Review and sign indicating approval or disapproval of the use of FMLA benefits.
 - 1) The District/Section Commander will ensure the required notifications of approval or disapproval are made within the time specifications established by the FMLA Act.

b. Forward daily the original to Personnel Section via the chain of command and ensure that the employee understands whether or not he must submit a treating health care provider completed Form WH-380 to receive final FMLA approved time off.

1) Maintain a copy in the employee's Medical Jacket.

2. When an employee returns to duty, note the date of return on the unit copy. Send a copy to Personnel Section.

3. Ensure that the district/section timekeeper tracks all FMLA time so that no employee is carried as FMLA time off more than 12 weeks in a 12-month period.

E. Responsibilities of Personnel Section

1. Receive copies of Form 25S for FMLA.

2. Review requests for FMLA to ensure Department compliance.

3. When the Form WH-380 is received at Personnel Section, it will be filed with the corresponding Form 25S. Without a treating health care provider completed Form WH-380 when required, FMLA time off cannot receive final approval.

a. Personnel Section reviews all FMLA requests as the Police Chief's designee.

1) If the request does not meet FMLA guidelines, the Personnel Section will notify the affected section to notify the employee that the time off does not meet FMLA guidelines.

4. Maintain a current list of employees who have taken leave under the provisions of the Family Medical Leave Act.

5. Provide the Police Chief with a list of Department employees currently on FMLA through the weekly leave report.

6. Serve as the Department liaison with EHS.